

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
TACOMA DIVISION

DIRECTV, Inc., a California corporation,

Plaintiff,

v.

RICH MURSCH, JAMES NELSON, DALE
NEWBERG, GREGORY PALLESEN, TOM
RHEW, B. SARGENT, MATTHEW
SCHECTER, DANIEL TIEDY, MARK
TOMLINSON, TIM TOZIER, THIEN
TRAN, CRAIG VANMETER, DUSTIN
WELLMAN, and SKIP WILKINSON,

Defendants.

No. **C02 - 5662 FDB**

**COMPLAINT FOR
COMPENSATORY, STATUTORY
AND OTHER DAMAGES, AND FOR
INJUNCTIVE RELIEF**

CV 02-5662 #1

Plaintiff DIRECTV, Inc., through its attorneys, alleges as follows:

INTRODUCTION

1. Plaintiff DIRECTV is the nation's leading direct broadcast satellite system, delivering over 225 channels of television and other programming to more than 10 million homes and businesses in the United States. DIRECTV's television programming currently includes major cable networks, studio movies and special events programming, as well as a variety of sports and other special interests programming. DIRECTV, a California company, has invested more than \$1.25 billion to develop its direct broadcast satellite system.

COMPLAINT FOR COMPENSATORY, STATUTORY
AND OTHER DAMAGES, AND FOR INJUNCTIVE
RELIEF - Page 1

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1 2. DIRECTV encrypts – electronically scrambles – its satellite transmissions to
2 provide security for and prevent unauthorized viewing of its satellite television
3 programming. DIRECTV offers its television programming to residential and business
4 customers on a subscription and pay-per-view basis only. Each customer is required to
5 obtain a DIRECTV Access Card and other system hardware (including a small satellite
6 dish) and create an account with DIRECTV. Upon activation of the Access Card by
7 DIRECTV, the customer can receive and view in a decrypted format (*i.e.*, unscrambled)
8 those channels to which the customer has subscribed or otherwise made arrangement to
9 purchase from DIRECTV.

10 3. DIRECTV executed several Writs of Seizure, with the assistance of local
11 law enforcement, including one on or about December 11, 2001, upon USA Card Cleaners
12 and on or about May 23, 2001 upon a mail shipping facility used by several major sources
13 of pirate technologies including Vector Technologies, DSS-Stuff, DSSPro, DSS-Hangout,
14 Whiteviper Technologies Technologies, Meadco, PCEase, Intertek Technologies, Shutt,
15 Inc., and Canadian Security and Technology. During and subsequent to the raids,
16 DIRECTV came into possession of a substantial body of sales records, shipping records,
17 email communications, credit card receipts and other records. Those records evidence
18 defendants' purchases of illegal Pirate Access Devices. In reliance upon those records and
19 other information, and upon information and belief, DIRECTV sets forth the allegations
20 and this complaint.

21 4. Each defendant is a resident of this District. DIRECTV alleges that
22 defendants have purchased and used illegally modified DIRECTV Access Cards and other
23 devices ("Pirate Access Devices") that are designed to permit viewing of DIRECTV's
24 television programming without authorization by or payment to DIRECTV.

25 5. Defendants' actions violate the Federal Communications Act of 1934, as
26 amended, 47 U.S.C. § 605; the Electronic Communications Privacy Act ("Federal Wiretap

1 Laws”), 18 U.S.C. §§ 2510-2521; Theft of Subscription Television Services, RCW
 2 9A.56.220 to .240; and Washington common law. DIRECTV brings this action to restrain
 3 these illegal activities against it.

4 **PARTIES**

5 6. Plaintiff DIRECTV, Inc. is a corporation duly incorporated under the laws of
 6 the State of California. DIRECTV has significant interests in maintaining and securing the
 7 integrity of its satellite transmissions of television programming, and in prohibiting the
 8 unauthorized reception and use of the same.

9 7. Defendant Rich Mursch is a resident of Bonney Lake, Washington. Upon
 10 information and belief, beginning in or about April 2001, defendant Mursch purchased one
 11 or more Pirate Access Devices from PC Ease. Defendant placed each order by using
 12 interstate or foreign wire facilities, and received his orders via the Postal Service or
 13 commercial mail carriers. Specifically, these illegal purchases included the following
 14 transaction:

15 (a) On or about April 12, 2001, defendant Mursch purchased a Pirate
 16 Access Device, consisting of a printed circuit board device with multiple pirating functions
 17 called a "Fusion," from PC Ease. The device was shipped to defendant Mursch at his
 18 address in Bonney Lake, Washington.

19 8. Defendant James Nelson is a resident of Tacoma, Washington. Upon
 20 information and belief, beginning in or about May 2001, defendant Nelson purchased six or
 21 more Pirate Access Devices from Canadian Security and Technology. Defendant placed
 22 each order by using interstate or foreign wire facilities, and received his orders via the
 23 Postal Service or commercial mail carriers. Specifically, these illegal purchases included
 24 the following transaction:

25 (a) On or about May 22, 2001, defendant Nelson purchased six Pirate
 26 Access Devices, consisting of five printed circuit board devices called "Unloopers" and a

1 computer chip called a "SU2 BS Boot Chip," from Canadian Security and Technology. The
2 devices were shipped to defendant Nelson at his address in Tacoma, Washington.

3 9. Defendant Dale Newberg is a resident of Kalama, Washington. Upon
4 information and belief, beginning in or about April 2001, defendant Newberg purchased
5 one or more Pirate Access Devices from DSS-Stuff. Defendant placed each order by using
6 interstate or foreign wire facilities, and received his orders via the Postal Service or
7 commercial mail carriers. Specifically, these illegal purchases included the following
8 transaction:

9 (a) On or about April 6, 2001, defendant Newberg purchased a Pirate
10 Access Device, consisting of a printed circuit board device called an "Unlooper," from
11 DSS-Stuff. The device was shipped to defendant Newberg at his address in Kalama,
12 Washington.

13 10. Defendant Gregory Pallesen is a resident of Kelso, Washington. Upon
14 information and belief, beginning in or about April 2001, defendant Pallesen purchased five
15 or more Pirate Access Devices from DSS-Stuff and five or more Pirate Access Devices
16 from Canadian Security and Technology. Defendant placed each order by using interstate
17 or foreign wire facilities, and received his orders via the Postal Service or commercial mail
18 carriers. Specifically, these illegal purchases included the following transactions:

19 (a) On or about April 2, 2001, defendant Pallesen purchased five Pirate
20 Access Devices, consisting of five printed circuit board devices called "Emulators," from
21 DSS-Stuff. The devices were shipped to defendant Pallesen at his address in Kelso,
22 Washington.

23 (b) On or about April 24, 2001, defendant Pallesen purchased five Pirate
24 Access Devices, consisting of five printed circuit board devices called "Unloopers," from
25 Canadian Security and Technology. The devices were shipped to defendant Pallesen at his
26 address in Kelso, Washington.

1 11. Defendant Tom Rhew is a resident of Vancouver, Washington. Upon
2 information and belief, beginning in or about May 2001, defendant Rhew purchased three
3 or more Pirate Access Devices from Canadian Security and Technology. Defendant placed
4 each order by using interstate or foreign wire facilities, and received his orders via the
5 Postal Service or commercial mail carriers. Specifically, these illegal purchases included
6 the following transaction:

7 (a) On or about May 24, 2001, defendant Rhew purchased three Pirate
8 Access Devices, consisting of a programmer specifically designed to illegally modify
9 DIRECTV Access Cards and two printed circuit board devices called "Unloopers," from
10 Canadian Security and Technology. The devices were shipped to defendant Rhew at his
11 address in Vancouver, Washington.

12 12. Defendant B. Sargent is a resident of Ilwaco, Washington. Upon
13 information and belief, beginning in or about March 2001, defendant Sargent purchased one
14 or more Pirate Access Devices from Vector Technologies. Defendant placed each order by
15 using interstate or foreign wire facilities, and received his orders via the Postal Service or
16 commercial mail carriers. Specifically, these illegal purchases included the following
17 transaction:

18 (a) On or about March 5, 2001, defendant Sargent purchased a Pirate
19 Access Device, consisting of a printed circuit board device called an "Emulator," from
20 Vector Technologies. The device was shipped to defendant Sargent at his address in Ilwaco,
21 Washington.

22 14. Defendant Daniel Tiedy is a resident of Vancouver, Washington. Upon
23 information and belief, beginning in or about May 2001, defendant Tiedy purchased one or
24 more Pirate Access Devices from Vector Technologies. Defendant placed each order by
25 using interstate or foreign wire facilities, and received his orders via the Postal Service or
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1 commercial mail carriers. Specifically, these illegal purchases included the following
2 transaction:

3 (a) On or about May 24, 2001, defendant Tiedy purchased a Pirate
4 Access Device, consisting of a printed circuit board device called an "Emulator," from
5 Vector Technologies. The device was shipped to defendant Tiedy at his address in
6 Vancouver, Washington.

7 15. Defendant Tim Tozier is a resident of Spanaway, Washington. Upon
8 information and belief, beginning in or about April 2001, defendant Tozier purchased
9 eleven or more Pirate Access Devices from Intertek Technologies. Defendant placed each
10 order by using interstate or foreign wire facilities, and received his orders via the Postal
11 Service or commercial mail carriers. Specifically, these illegal purchases included the
12 following transaction:

13 (a) On or about April 2, 2001, defendant Tozier purchased eleven Pirate
14 Access Devices, consisting of seven printed circuit board device called "Unloopers" and
15 four printed circuit board devices called "Emulators," from Intertek Technologies. The
16 devices were shipped to defendant Tozier at his address in Spanaway, Washington.

17 16. Defendant Thien Tran is a resident of Lacey, Washington. Upon
18 information and belief, beginning in or about May 2000, defendant Tran purchased two or
19 more Pirate Access Devices from Whiteviper Technologies. Defendant placed each order
20 by using interstate or foreign wire facilities, and received his orders via the Postal Service
21 or commercial mail carriers. Specifically, these illegal purchases included the following
22 transaction:

23 (a) On or about May 30, 2000, defendant Tran purchased two Pirate
24 Access Devices, consisting of a programmer specifically designed to illegally modify
25 DIRECTV Access Cards and a printed circuit board device called an "Unlooper," from
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1 Whiteviper Technologies. The devices were shipped to defendant Tran at his address in
2 Lacey, Washington.

3 17. Defendant Craig Vanmeter is a resident of Tacoma, Washington. Upon
4 information and belief, beginning in or about May 2001, defendant Vanmeter purchased
5 four or more Pirate Access Devices from Canadian Security and Technology. Defendant
6 placed each order by using interstate or foreign wire facilities, and received his orders via
7 the Postal Service or commercial mail carriers. Specifically, these illegal purchases
8 included the following transaction:

9 (a) On or about May 14, 2001, defendant Vanmeter purchased four
10 Pirate Access Devices, consisting of two programmers specifically designed to illegally
11 modify DIRECTV Access Cards and two printed circuit board devices called "Unloopers,"
12 from Canadian Security and Technology. The devices were shipped to defendant Vanmeter
13 at his address in Tacoma, Washington.

14 18. Defendant Dustin Wellman is a resident of Battle Ground, Washington.
15 Upon information and belief, beginning in or about April 2001, defendant Wellman
16 purchased three or more Pirate Access Devices from Canadian Security and Technology.
17 Defendant placed each order by using interstate or foreign wire facilities, and received his
18 orders via the Postal Service or commercial mail carriers. Specifically, these illegal
19 purchases included the following transactions:

20 (a) On or about April 11, 2001, defendant Wellman purchased a Pirate
21 Access Device, consisting of a printed circuit board device called an "Emulator," from
22 Canadian Security and Technology. The device was shipped to defendant Wellman at his
23 address in Battle Ground, Washington.

24 (b) On or about April 11, 2001, defendant Wellman purchased two Pirate
25 Access Devices, consisting of two printed circuit board devices called "Unloopers," from
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1 Canadian Security and Technology. The devices were shipped to defendant Wellman at his
2 address in Battle Ground, Washington.

3 19. Defendant Skip Wilkinson is a resident of Kelso, Washington. Upon
4 information and belief, beginning in or about May 2001, defendant Wilkinson purchased
5 one or more Pirate Access Devices from Vector Technologies. Defendant placed each
6 order by using interstate or foreign wire facilities, and received his orders via the Postal
7 Service or commercial mail carriers. Specifically, these illegal purchases included the
8 following transaction:

9 (a) On or about May 9, 2001, defendant Wilkinson purchased a Pirate
10 Access Device, consisting of a printed circuit board device called an "Unlooper," from
11 Vector Technologies. The device was shipped to defendant Wilkinson at his address in
12 Kelso, Washington.

13 JURISDICTION AND VENUE

14 20. This action arises under the Federal Communications Act of 1934, as
15 amended, 47 U.S.C. § 605; the Electronic Communications Privacy Act ("Federal Wiretap
16 Laws"), 18 U.S.C. §§ 2510-2521; Theft of Subscription Television Services, RCW
17 9A.56.220 to .240; and Washington common law.

18 21. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338
19 (b), 47 U.S.C. § 605(e)(3)(A) and 18 U.S.C. § 2520(a), and has supplemental jurisdiction
20 pursuant to 28 U.S.C. § 1367(a) over the state law claims asserted herein.

21 22. Each defendant is a resident of this District. Personal jurisdiction and venue
22 are proper in this District pursuant to 28 U.S.C. § 1391(b).

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FIRST CLAIM

UNAUTHORIZED RECEPTION OF SATELLITE SIGNALS

IN VIOLATION 47 U.S.C. § 605(a)

23. Plaintiff DIRECTV repeats and realleges the allegations in Paragraphs 1 through 22 as if set forth fully herein.

24. Defendants have received and/or assisted others in receiving DIRECTV's satellite transmissions of television programming without authorization, in violation of 47 U.S.C. § 605(a).

25. Defendants' violations have injured and will continue to injure DIRECTV by depriving DIRECTV of subscription and pay-per-view revenues and other valuable consideration, compromising DIRECTV's security and accounting systems, infringing DIRECTV's trade secrets and proprietary information, and interfering with DIRECTV's contractual and prospective business relations.

26. Defendants knew or should have known that receiving and assisting third persons in receiving DIRECTV's satellite transmissions of television programming without authorization by or payment to DIRECTV was and is illegal and prohibited. Such violations have caused and will continue to cause DIRECTV irreparable harm, and DIRECTV has no adequate remedy at law to redress any such continued violations. Unless restrained by this Court, defendants will continue to violate 47 U.S.C. § 605(a).

SECOND CLAIM

UNAUTHORIZED INTERCEPTION OF ELECTRONIC

COMMUNICATIONS IN VIOLATION OF 18 U.S.C. § 2511(1)(a)

27. Plaintiff DIRECTV repeats and realleges the allegations in Paragraphs 1 through 26 as if set forth fully herein.

28. By using Pirate Access Devices to decrypt and view DIRECTV's satellite transmissions of television programming, defendants intentionally intercepted, endeavored

1 to intercept, or procured other persons to intercept or endeavor to intercept, DIRECTV's
2 satellite transmission of television programming, in violation of 18 U.S.C. §2511(1)(a).

3 29. Defendant's violations have injured and will continue to injure DIRECTV
4 by depriving DIRECTV of subscription and pay-per-view revenues and other valuable
5 consideration, compromising DIRECTV's security and accounting systems, infringing
6 DIRECTV's trade secrets and proprietary information, and interfering with DIRECTV's
7 contractual and prospective business relations.

8 30. Defendants knew or should have known that such interception of
9 DIRECTV's satellite transmissions of television programming was and is illegal and
10 prohibited. Such violations have caused and will continue to cause DIRECTV irreparable
11 harm, and DIRECTV has no adequate remedy at law to redress any such continued
12 violations. Unless restrained by this Court, defendants will continue to violate 18 U.S.C. §
13 2511(1)(a).

14 **THIRD CLAIM**

15 **POSSESSION OF PIRATE ACCESS DEVICES**

16 **IN VIOLATION OF 18 U.S.C. 2512(1)(b)**

17 31. Plaintiff DIRECTV repeats and realleges the allegations in Paragraphs 1
18 through 30 as if set forth fully herein.

19 32. Defendants possessed and used Pirate Access Devices, knowing or having
20 reason to know that the design of such devices render them primarily useful for the purpose
21 of surreptitious interception of DIRECTV's satellite transmissions of television
22 programming, and that such devices, or any components thereof, have been or will be sent
23 through the mail or transported in interstate or foreign commerce, in violation of 18 U.S.C.
24 § 2512(1)(b).

25 33. Defendants' violations have injured and will continue to injure DIRECTV
26 by depriving DIRECTV of subscription and pay-per-view revenues and other valuable

1 consideration, compromising DIRECTV's security and accounting systems, infringing
 2 DIRECTV's trade secrets and proprietary information, and interfering with DIRECTV's
 3 contractual and prospective business relations.

4 34. Defendants knew or should have known that possessing Pirate Access
 5 Devices was and is illegal and prohibited. Such violations have caused and will continue to
 6 cause DIRECTV irreparable harm, and DIRECTV has no adequate remedy at law to redress
 7 any such continued violations. Unless restrained by this Court, defendants will continue to
 8 violate 18 U.S.C. § 2512(1)(b).

9 **FOURTH CLAIM**

10 **THEFT OF SUBSCRIPTION TELEVISION SERVICES**

11 **IN VIOLATION OF RCW 9A.56.220**

12 35. Plaintiff DIRECTV repeats and realleges the allegations in Paragraphs 1
 13 through 34 as if set forth fully herein.

14 36. Defendants have used Pirate Access Devices to decrypt and view
 15 DIRECTV's satellite transmissions of television programming, with intent to avoid
 16 payment of the lawful charges therefor, by trick, artifice, deception, use of a device or
 17 decoder, and other fraudulent means, without authority from DIRECTV, in violation of
 18 RCW 9A.56.220

19 37. Defendants have possessed Pirate Access Devices, with intent to avoid
 20 payment to DIRECTV of the lawful charges for its programming, that are designed in
 21 whole or in part to receive subscription television services offered for sale by DIRECTV,
 22 without authority of DIRECTV.

23 38. Defendants' violations have injured and will continue to injure DIRECTV
 24 by depriving DIRECTV of subscription and pay-per-view revenues and other valuable
 25 consideration, compromising DIRECTV's security and accounting systems, infringing
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1 DIRECTV's trade secrets and proprietary information, and interfering with DIRECTV's
2 contractual and prospective business relations.

3 39. Defendants knew or should have known that theft of subscription television
4 services was and is illegal and prohibited. Such violations have caused and will continue to
5 cause DIRECTV irreparable harm, and DIRECTV has no adequate remedy at law to redress
6 any such continued violations. Unless restrained by this Court, defendants will continue to
7 violate RCW 9A.56.220.

8 **FIFTH CLAIM**

9 **CONVERSION**

10 40. Plaintiff DIRECTV repeats and realleges the allegations in Paragraphs 1
11 through 39 as if set forth fully herein.

12 41. By importing, possessing and using Pirate Access Devices, defendants have
13 unlawfully converted to their own use and benefit property belonging to DIRECTV.

14 42. Such conversion was done intentionally and wrongfully by defendants to
15 deprive DIRECTV of its proprietary interests and for defendants' direct benefit and
16 advantage.

17 43. As a direct and proximate result of defendants' unlawful acts, DIRECTV has
18 suffered and continues to suffer damages, including lost subscription and pay-per-view
19 revenues and other valuable consideration.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff DIRECTV requests that this Court grant the following
22 relief:

23 (1) Find the defendants' conduct in importing, possessing and/or using Pirate
24 Access Devices violates 47 U.S.C. § 605(a), 18 U.S.C. §§ 2511(1)(a) and 2512(1)(b), and
25 RCW 9A.56.220, and Washington common law, and further find that defendants' violations
26 were willful, malicious or for a tortious or illegal purpose;

1 (2) In accordance with 47 U.S.C. § 605(e)(3)(B)(i), 18 U.S.C. § 2520(b)(1) and
2 RCW 9A.56.250(4), enjoin and restrain defendants, and persons controlled directly and
3 indirectly by defendants, from importing, possessing, or using Pirate Access Devices, and
4 further order defendants to surrender all Pirate Access Devices;


5 (3) In the event of a default, in accordance with 18 U.S.C. § 2520(c)(2)(B), 18
6 U.S.C. § 2511, an award of statutory damages of \$10,000 for each violation of 18 U.S.C. §
7 2511(a)(2) alleged herein, and a further award of DIRECTV's reasonable attorneys' fees
8 and costs in the amount of \$850;

9 (4) In the event of trial, an award of either (a) statutory damages in accordance
10 with 47 U.S.C. § 605(e)(3)(C)(i)(II), 18 U.S.C. § 2520(c)(2), and RCW 9A.56.250(2) or (b)
11 compensatory and punitive damages in accordance with 605(e)(3)(C)(i)(I), 18 U.S.C. §
12 2520(c)(2), RCW 9A.56.250(3) and Washington common law; and DIRECTV's reasonable
13 attorneys' fees and costs in accordance with 47 U.S.C. § 605(e)(3)(B)(iii), 18 U.S.C. §
14 2520(b)(3) and RCW 9A.56.250(2);

15 (5) For such additional relief as the Court deems just and equitable.

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17 Dated: December 13th, 2002.

18 YARMUTH WILSDON CALFO PLLC

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24 Attorneys for Plaintiff DIRECTV, Inc.
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